

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1141 of 1994

and

MISC. CIVIL APPLICATION NO. 219 OF 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTILAL MOHANBHAI BHAGAT

Versus

PRATIMABEN KANTILAL BHAGAT

Appearance:

MR MB GANDHI for Petitioner

MR SAURIN A SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/02/97

ORAL JUDGEMENT

Appellant who is the original petitioner-husband has filed this appeal under S.28 of the Hindu Marriage Act, 1955 (for be referred to as 'the Act') read with S.96 of the Code of Civil Procedure challenging the judgment and decree dated 28.2.1994 passed by the learned City Civil Judge, Court No. 8, Ahmedabad in HMP

No.291/89, whereby the learned Judge dismissed the petition of the appellant-husband for divorce which was filed under S. 13 of the Act.

2. The appeal was admitted on 11.10.1995.

3. Respondent-wife had filed a private complaint before the learned Metropolitan Magistrate, Court No.3, Ahmedabad, against the appellant for offences punishable under S.494 and 114 of the I.P.Code which was numbered as Criminal Case No. 1596 of 1983. In that criminal case, the appellant and one Chetna were honourably acquitted by the learned Magistrate, against which, the respondent-wife had filed acquittal appeal before this Court being Criminal Appeal No. 991/86. The above criminal appeal came to be placed before the court (Coram: A N Divecha, J.). In that acquittal appeal, as a result of the intervention of the relatives and well-wishers of the appellant and the respondent, an agreement came to be executed on 24.1.1997 by which the parties agreed to dissolve their marriage by mutual consent. After execution of the agreement, the parties to this first appeal have also filed terms of settlement which is signed by both the parties as well as their learned advocates.

4. After signing of the terms of settlement, Misc. Civil Application No. 294/97 was filed to convert the main petition for divorce into petition under S.13B of the Act. The said MCA was allowed and the petition for divorce filed under S.13 of the Act was permitted to be converted into petition for divorce by mutual consent as provided under S.13B of the Act. The appellant and the respondent have filed their affidavits today, i.e. 11.2.1997, expressing their consent that their marriage be dissolved as reunion is not possible. They have also prayed in their affidavits that the statutory period as prescribed under S.13B(2) of the Act be waived as their marriage has completely broken and there are no chances for reunion. As per the principle laid down in DR.DHIREN HARILAL GARASIA vs. MANSU alias MINA CHAMANLAL GANGI, 1987(2) GLR, p. 1321, the provisions under S.13B(2) are in the nature of directory and not mandatory, and in a fit case, decree for divorce by mutual consent can be granted even though the sub-section is not strictly complied with. Even after the affidavits are filed, this court ascertained the wishes of the appellant and the respondent, and they have stated that as there are no chances for reunion, their marriage may be dissolved by passing a decree under S.13B of the Act. Taking into consideration the facts and circumstances of the case,

and the fact that the appellant and the respondent are living separately since last 13 years, I thought it proper to waive the statutory period as prescribed under S.13B(2) of the Act.

5. The appellant has made provision for maintenance of the respondent-wife and the two minor children as stated in the consent terms dated 24.1.1997. The said consent terms shall form part of this judgment and decree dissolving the marriage of the appellant and the respondent which had taken place at Ahmedabad on 22.2.1978, as per Hindu religious rites.

6. The appellant and the respondent have also stated in their affidavits that there are no chances for their reunion and they have decided to take divorce by mutual consent on their own sweet will and there is no coercion, threat or collusion between them. Hence in my opinion, all the ingredients of S.13B of the Act are fully complied with and there cannot be any hesitation in passing the decree for dissolution of the marriage between the appellant and the respondent.

7. As a result of the foregoing discussion, it is declared that the marriage solemnized between appellant Kantilal Mohanlal Bhagat and respondent Pratima Kantilal Bhagat, at Ahmedabad on 22.2.1978, as per Hindu religious rites, stands dissolved with effect from today, i.e. 11.2.1997. The consent terms annexed as Annexures B & C in Misc. Civil Application No. 219 of 1997 shall form part of this judgment and decree.

First Appeal No. 1141/94 stands disposed of in the above terms.

In view of the order passed in F.A.No. 1141/94, Misc. Civil Application No. 219 of 1997 stands disposed of with no orders.

(abraham)